

From: Albert "Kell" Kelly
To: [Fugh, Justina](#)
Subject: FW: conflict questions
Date: Monday, March 20, 2017 2:03:20 PM
Attachments: [removed.txt](#)

Hello Ms. Fugh, I was directed to you after my conversation with Mr. Fort and Ms. Vross of your office. (I may have butchered the spelling of Ms. Vross' name and if so, accept my apology.)

I have been tentatively approved to work for Administrator Pruitt. In contemplating such move, I wanted to take every precaution not to violate any conflict rules/laws. Briefly set out below are the questioned areas. I would appreciate your guidance on a few of these.

Chairman of the Board of SpiritBank. Spirit is a \$750 million bank headquartered in Tulsa, Oklahoma. It is privately held and is a simple community bank that handles the standard product most local banks do. To my knowledge, we do not have any EPA issues that we touch specifically. I am an active chairman but for several years have abstained from voting in a board position. We have never had a tie vote so I have not had to deviate from that stance. I would like to maintain the Chairman's position but not obviously in the current day to day active status.

Chairman of the Oklahoma Turnpike Authority (OTA). The OTA is an instrumentality of the State of Oklahoma. This position is non-paid but the governing board is responsible for actions and policies to run the 605 miles of toll roads. I would resign this position but my understanding is that I would have some form of one year prohibition from anything that touches the OTA. I am just unsure how broad that would need to be.

Partner in Premier Steel Services. I own approximately (b) (6) in this company that fabricates structural steel for buildings. It would be very hard to divest of this. I am not active day to day. Is there a way to recuse around this effectively?

Owner and operator of a cattle ranch. I operate a 200 head(approx.) beef cattle ranch. This is a simple grow and sell operation. Again, it would be hard to divest of this as it involves pasture land as well as the cattle themselves. What, if any, action would I need to take here?

These are my areas of question. I would appreciate some guidance specifically. Thank you.

Albert 'Kell' Kelly
Chairman of the Board



Executive Division
Office phone: 918-295-7242
Mobile phone: (b) (6)

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From: Albert "Kell" Kelly
To: [Fugh, Justina](#)
Subject: Bank Chairman discussion
Date: Thursday, March 23, 2017 5:42:58 PM
Attachments: [removed.txt](#)

Hello Ms. Fugh. Thank you very much for your time yesterday. I hope your (b) (6) continues to improve. I wanted to merely repeat in an email what I think I heard regarding the above.

- I can continue as Chairman of the Bank
- I obviously would not act as Executive Chairman as I would be in Washington
- I would recuse out of any banking matter that might be before the EPA
- Any activities related to the bank job would be done strictly on my own time and not on EPA time. While I am not sure how leave works there. I would assume that if I had to attend a meeting for the bank, I would do so on leave time or vacation days.
- We did not discuss this but I would assume that for any duties performed in that role, I could receive remuneration as determined by the bank.

I hope I am not too much of a bother here. I am just trying to be sure I am following the rules. Please review and amend or add or delete. Thank you again.

Albert 'Kell' Kelly
Chairman of the Board



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Office phone: 918-295-7242
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From: Albert "Kell" Kelly
To: [Fugh, Justina](#)
Subject: Re: [EXTERNAL] RE: Bank Chairman discussion
Date: Saturday, March 25, 2017 10:35:36 AM
Attachments: [removed.txt](#)

Thank you very much for your detailed and timely response. Thanks as well for the kind and informative conversation.

I guess i really need clarification on the bank position. I will not be a Senate confirmed position but if I have to completely leave the bank then I have to further negotiate my termination terms.

Sorry to keep being a bother. Let me know if I need to gather additional information. Thank you again.

Sent from my iPhone

On Mar 24, 2017, at 8:07 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi there,

What a lovely conversation we had earlier this week! Allow me to reconfirm our discussion, copying Dan Fort and Jeanne Duross so that they know as well. I did mention to them briefly that we had talked, but since I'll be on travel much of next week, I won't be able to follow up with them in case there are further developments.

BACKGROUND: You have been invited by Administrator Pruitt to join him as he leads EPA. Although we are not yet sure what role you will serve, we can still provide you with guidance about possible ethics implications given your current positions and assets. What I can't do right now is to provide advice about the implications of the Trump Ethics Pledge because I don't yet know whether you will be asked to sign it. Individuals who are appointed through the White House are required by [Executive Order 13,770](#) to sign an ethics pledge but we don't yet know whether you will be a political appointment or not.

CHAIRMAN OF THE BOARD – SpiritBank

You explained that Spirit is a privately held community bank headquartered in Tulsa, Oklahoma, and that you serve as the chairman of the board. I advised you that OGC/Ethics (where I work) can approve you to continue to serve as the chairman as an "outside activity" (meaning outside of your federal employment), provided that you do not engage in those activities while on official EPA time or in the EPA workplace. You would instead have to take leave, perform the duties on the weekends or after business hours, or during lunch. We will remind you not to

use your EPA email address or phone in connection with your bank activities. We will need to recuse you from working on banking issues (such as the Environmental Financial Advisory Board or financial assurance matters). You may be compensated for this work.

There are two complicating factors that I should mention now. First, as a federal employee, you will be subject to certain “representational conflicts of interest” statutes, 18 USC 203 and 205. Simply put, these statutes prohibit an employee from representing, say, SpiritBank, back to the United States government. So if there is an issue that requires the bank to interact with the US government (not just EPA), then you can’t be the person who signs the letter or attends the meeting. Second, it may evolve that the Administrator wants you to serve in a political position as a non-career SES appointee or perhaps even in a Presidentially Appointed Senate confirmed position. If so, then I will need to ascertain (b) (5)

but will be happy to check on that further if the need arises.

CHAIRMAN of the Oklahoma Turnpike Authority (OTA)

You explained that the OTA is an instrumentality of the State of Oklahoma, but that you were not actually an employee of the State. Rather, you volunteered for the position which oversees the board responsible for actions and policies to run 605 miles of toll roads. We agreed that you would resign this position, and I explained that, from one year from the date of your resignation, you would have a “cooling off” period with the OTA as a specific party. We discussed the fact that the application of that recusal is that you can’t work on a specific party matter (such as an investigation, enforcement action, permit, license, grant, contract) in which OTA is a party or represents a party, but that you could still work on transportation issues (including rulemaking) or other matters of general applicability.

The complicating factor here is that if you need to sign the Trump ethics pledge, then the recusal period expands to two years from the date you join EPA, and may extend a bit beyond specific party matters. That said, I don’t foresee any significant ethical obstacles with your service.

Premier Steel Services

You have a financial interest in a company that fabricates structural steel for buildings. I advised you that you could keep this asset but that we would have to recuse you from working on any particular matter of general applicability that

affects this particular industry. That restriction will extend to rulemaking, but I think it unlikely that EPA would attempt to regulate just that industry. Again, I don't foresee that keeping this asset will adversely affect your service to the Administrator.

Owner and Operator of a cattle ranch

You explained that you own the beef cattle and that an LLC owns the ranch. This is not a concentrated animal feeding operation, but rather a ranch where the cattle roam free. We will need to recuse you from working on, for example, agricultural-related issues, but I proposed that we restrict you from working on those issues that affect Oklahoma (where your ranch is located). We also talked a bit about another farm you own and lease to a tenant farmer. Since you don't grow and harvest the wheat (it was wheat, right?) yourself, I am not currently inclined to restrict you from working on agricultural issues in that state (as I recall, it wasn't Oklahoma). We'll nail down the advice for the wheat farm when we see your financial disclosure report. We discussed briefly the representational conflict of interest concern with regard to the LLC, but you didn't anticipate any likely issues.

Gosh, I think that's everything we discussed. It was a charming conversation, and I enjoyed our discussion! I will be on travel much of next week, so I may not be available if you call. But I should be checking email often, so do feel free to email me if you think of other issues.

Cheers,

Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Albert 'Kell' Kelly [<mailto:akelly@SpiritBank.com>]

Sent: Thursday, March 23, 2017 5:45 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: Bank Chairman discussion

Hello Ms. Fugh. Thank you very much for your time yesterday. I hope your (b) (6) continues to improve. I wanted to merely repeat in an email what I think I heard regarding the above.

I hope I am not too much of a bother here. I am just trying to be sure I am following the rules. Please review and amend or add or delete. Thank you again.

Albert 'Kell' Kelly
Chairman of the Board



Executive Division
Office phone: 918-295-7242
Mobile phone: (b) (6)

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From: [Kelly, Albert](#)
To: [Fugh, Justina](#)
Cc: [Falvo, Nicholas](#)
Subject: financial disclosure
Date: Wednesday, August 02, 2017 12:45:04 PM

Hello Ms. Fugh, I will be submitting my financial disclosure by close of business today. I think I have some duplications but hopefully have covered everything. I wanted to give you a couple points that I did not find a place for or I could not find a way to correct.

- The (b) (6). I received some corrected information later.
- I have not shown any (b) (6) as I do not report any and am not to my knowledge provided with any
- The (b) (6).
- (b) (6). It appears confusing but that is the arrangement
- On (b) (6) but are properly reported
- On the (b) (6)
- On the (b) (6)
- The (b) (6)
- The (b) (6).
- Though it did not ask for the disclosure that I saw, (b) (6).
- Also, I have (b) (6).
I did not see a place for that either.
- On the (b) (6) so the drop down box would not work. I put in specific figures.

Ms. Fugh, I hope you find my submission satisfactory. If you need additional information please advise. Thank you for all of your advice on this matter.

Albert Kelly
Senior Advisor to the Administrator
1200 Pennsylvania Avenue, NW
Washington, DC 20460
202 306 8830

From: [Ross, Margaret](#)
To: [Kelly, Albert](#)
Cc: [Falvo, Nicholas](#); [Fugh, Justina](#)
Subject: FW: PCI group meeting
Date: Wednesday, February 28, 2018 1:18:00 PM

Hi Mr. Kelly and Nick,

Just wanted to give you an update. Please call me with any questions.

1. Justina sent a note (below) to the Region 10 Ethics Counsel re: Portland Harbor, noting that she sees no reason for you to recuse because your ownership interest “[is below the regulatory exemption for participation in specific party matters](#). See 5 CFR 2640.202(a)”.
2. I’ve gotten a list of all superfund sites related to companies in which Mr. Kelly’s holdings are above the exemption limit. One company, Allergan, is PRP for several sites. I’ll discuss next steps with our attorney. **Please do not participate in any matter involving these sites.**

Region	Party Name/Affiliate	Site Name	EPA ID	NPL Status
6	ALLERGAN, INC	ARKANSAS WASTE-TO-ENERGY	ARD982286957	Not on the NPL
9	ALLERGAN INC.	CASMALIA RESOURCES	CAD020748125	Final
9	ALLERGAN INC.	OMEGA CHEMICAL CORPORATION	CAD042245001	Final

3. I have a list of superfund sites related to Phillips 66 and Philips 66 partners, but I want to be very clear about why: Phillips 66 Partners is a limited partnership company whose general partner is Phillips 66. Phillips 66 owns approximately three quarters of Phillips 66 Partner stock, and the rest is publicly traded. I believe that these are two separate companies and should be treated as separate entities for the purpose of determining ownership interest/exemption levels, but I am new enough that I want to double check that answer. If we treat these as separate companies, then (b) (6) – no conflict. If I am wrong, and (b) (6). In that case, we’d need to look at recusal, selling off stock, etc. Here is that list of sites:

Region	Party Name/Affiliate	Site Name	EPA ID	NPL Status
4	ELM PHILLIPS 66, HULLETT PHILLIPS 66, MT. LEO PHILLIPS 66, PHILLIPS 66 (MURFREESBORO, TN), PHILLIPS 66 CORPORATE HEADQUARTERS,	JACK GOINS WASTE OIL	TND981022395	Not on the NPL
4	PHILLIPS 66 COMPANY	PEAK OIL CO./BAY DRUM CO.	FLD004091807	Final
4	EMERALD PHILLIPS 66 (HOLLYWOOD), PHILLIPS 66, PHILLIPS 66 (FT. LAUDERDALE), PHILLIPS 66 (HOLLYWOOD), PHILLIPS 66 (MIAMI BEACH), PHILLIPS 66 (MIAMI), PHILLIPS 66 COMPANY, PHILLIPS 66 STATION (HOLLYWOOD), PHILLIPS 66 STATION (MIAMI)	PETROLEUM PRODUCTS CORP	FLD980798698	Final
4	PHILLIPS 66	SMOKEY MOUNTAIN SMELTERS	TND098071061	Final
4	PHILLIPS 66 COMPANY	YELLOW WATER ROAD	FLD980844179	Deleted from final NPL
4	PHILLIPS 66/BELALF CONOCOPHILLIPS, TOSCO WOOD REF, PHILLIPS	LWD	KYD088438817	Not on the NPL

5	PHILLIPS 66 CORPORATE HEADQUARTERS	LAKE CALUMET CLUSTER	ILD000716852	Final
5	PHILLIPS 66 PIPELINE LLC	ROGERS CARTAGE	ILN000510652	Not on the NPL
6	PHILLIPS 66 COMPANY	MARCO OF IOTA	LAD980624514	Not on the NPL
6	PHILLIPS 66 COMPANY	PALMER BARGE LINE	TXD068104561	Deleted from final NPL
6	PHILLIPS 66 COMPANY	SBA SHIPYARD	LAD008434185	Final
6	PHILLIPS 66 COMPANY	STATE MARINE OF PORT ARTHUR	TXD099801102	Deleted from final NPL

4. There are no Superfund sites related to Axon or SpiritBank – the two other companies in which (b) (6) However, it's good to be aware of these, just in case something tangential were to crop up. Don't participate in any matters involving these companies.
5. I'm having all remaining companies, LLCs, etc. checked for PRP status, just in case. That report should be in by Friday.
6. Because federal ethics rules are not very widely understood, I'm still working on trying to get a small FAQ that we can share broadly so that we can be ready to answer questions I'd expect to get about:
 - a. Exemption levels,
 - b. "specific party matters",
 - c. why wholly owned subsidiaries are considered the same company, but Philips 66 and Phillips 66 Partners are not,
 - d. what superfund sites are associated with (b) (6) (Allergan has 3 sites), and
 - e. whether he has participated personally and substantially on any of these sites.

Best,
Margaret

Margaret Ross | Ethics Officer | Office of General Counsel | US EPA | William Jefferson Clinton Federal Building Room 4310A North | Washington, DC 20460 (for ground deliveries: 20004) | phone 202-564-3221

From: Fugh, Justina
Sent: Wednesday, February 28, 2018 10:56 AM
To: Wright, Garth <wright.garth@epa.gov>
Cc: Ross, Margaret <Ross.Margaret@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: PCI group meeting

Hi Garth,
 Margaret and I talked this morning (even though she was dealing with (b) (6) ... your ethics team is very devoted!). We don't see any reason for Mr. Kelly to be recused from the meeting related to Portland Harbor. While he does (b) (6) the regulatory exemption for participation in specific party matters. See 5 CFR 2640.202(a). We note that he does also (b) (6), but those are separate companies.
 Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Kelly, Albert](#)
To: [Ross, Margaret](#)
Subject: RE: Update on Financial Disclosure
Date: Wednesday, March 14, 2018 12:29:22 PM

Hello Ms. Ross. Always nice to hear from you. I confirmed with Holli Taylor that she had provided to you all of the information on my (b) (6). I did not do anything else with that reporting wise. I will now be disclosing any transactions she makes. So, I am assuming I need not do anything on the (b) (6) itself. Second, I did not do any checking on any conflicts on her purchases. Is there anything I need to do?

Albert Kelly
Senior Advisor to the Administrator
1200 Pennsylvania Avenue, NW
Washington, DC 20460
202 306 8830

From: Ross, Margaret
Sent: Tuesday, March 13, 2018 6:01 PM
To: Kelly, Albert <kelly.albert@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: Update on Financial Disclosure

Hi Mr. Kelly,

I wanted to summarize the EPA Ethics review of your holdings, based on your public financial disclosure report, and to thank you for your patience and your prompt responses to our many (many, many) follow up questions. To our knowledge you currently have no conflicts of interest. This email discusses the analyses performed, the determinations reached, and provides you with information to help you continue to fulfill your ethics obligations under the law. Stay vigilant!

Best,
Margaret

Analyses and determinations:

- **Allergan.** Allergan is a PRP on three Superfund sites and, according to his 278 filed on 8/2/17, Mr. Kelly's (b) (6) the exemption level for specific party matters. Out of an abundance of caution, EPA Ethics asked the EPA Office of Site Remediation Enforcement (OSRE) to provide a list of the active superfund sites and learned (somewhat to our surprise) that Allergan was a PRP. We formally notified Mr. Kelly of this fact on 2/28/18, very soon after receiving the information from OSRE. Of his own volition, Mr. Kelly (b) (6) immediately and reported this on 3/1/18. We did not have any opportunity to discuss the possibility of a Certificate of Divestiture, but we have reminded him that he needs to complete a 278t for (b) (6). Since he no longer has any conflicts with Allergan, he is able to participate in matters where Allergan is a party.

Mr. Kelly mentioned that he had attended one internal EPA meeting about one of the Allergan sites. He explained that the meeting involved EPA regional staff presenting information about the site to Administrator Pruitt. Mr. Kelly reports that his role in the meeting was just listening: he was neither an advisor nor a decision-maker at the meeting or on the site. EPA Ethics discussed this matter and determined that his attendance at this informational meeting is unlikely to constitute personal and substantial involvement in the site, and therefore does not trigger 208.

- **Phillips 66 and Phillips 66 Partners.** Mr. Kelly did not have a conflict with Phillips 66 Partners or with Phillips 66 even before (b) (6) the exemption level for specific party matters. So we reaffirm that he can participate in matters where Phillips 66 is a party and he can participate in matters where Phillips 66 Partners is a party.

We determined that Phillips 66 and Phillips 66 Partners are not the same company. (Phillips 66 Partners is a Limited Partnership for whom Phillips 66 is the General Partner, and owns approximately 75% of the stock.) Theoretically, if Partners were a wholly owned subsidiary of Phillips 66, (again, it is not), then Mr. Kelly's (b) (6) the exemption level for specific party matters. Because it has been reported (incorrectly) that Phillips 66 Partners is a wholly owned subsidiary of Phillips 66, and cognizant of misguided concerns about the similarity in the names of the two companies, Mr. Kelly decided of his own volition, to avoid even a whiff of conflict, to (b) (6) the exemption level for specific party matters.

- **ConocoPhillips.** Mr. Kelly does not have a conflict with ConocoPhillips. He does (b) (6) the exemption level for specific party matters. He can participate in matters where ConocoPhillips is a party.
- **Axon.** Mr. Kelly has (b) (6) the exemption level for specific party matters. However, I have confirmation from OSRE that Axon is not a PRP for any superfund site. Mr. Kelly must remain vigilant, however, and not participate in any matters where Axon is a party, should one arise in the future.
- **SpiritBank.** Mr. Kelly has (b) (6) the exemption level for specific party matters and matters of general applicability. However, SpiritBank is not a PRP for any superfund site, and Mr. Kelly does not and is unlikely to work on any matters of general applicability involving banks or banking. Mr. Kelly knows that he must remain vigilant, however, and not participate in any matters where SpiritBank is a party, or might be affected by a matter of general applicability, should that unlikely event ever occur.

In order to support the continued fulfillment of your ethics obligations, please see the following FAQ, and let us know if you have any questions:

What is a particular matter?

A “particular matter” involves any deliberation, decision or action and that is focused on the interests of specific persons/organizations or any identifiable class of persons. It includes “specific party” matters (e.g., contracts, grants, assistance agreements, lawsuits, enforcement action, permits, licenses, audits) and matters of “general applicability” (e.g., rulemaking or policy matters) that distinctively affect a particular industry or identifiable class of persons.

What is “personal and substantial” participation?

Personal participation means that you were personally involved in the matter or that you directed or controlled a subordinate’s participation. **Substantial participation** means that your involvement in the matter was of significance, which includes decision-making, review or recommendation as to an action being taken, signing or approving a final document, and/or participating in a final decision briefing.

What is a “direct and predictable” effect on a financial interest?

The effect must be direct and predictable and not speculative (though the actual dollar amount does not need to be ascertained). There must be close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.

Regulatory Exemption Levels

There are different regulatory exemption levels, depending on the type of particular matter. You can still participate if you own less than the levels below:

SPECIFIC PARTY MATTER	MATTER OF GENERAL APPLICABILITY
e.g., an enforcement action against ABC Widget Company e.g., a contracting decision involving ABC Widget Company	e.g., working on a rulemaking that affects all widget manufacturers
=\$15,000 aggregate in ABC Widget Co. =\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product)	=\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.) =\$50,000 aggregate in all affected parties (all widget makers)

Don’t forget that you have to add together your own ownership interest and any imputed interest. You also have to aggregate how many assets you own in the same sector.

EXAMPLE: You own \$8,000 worth of ABC Widget and your spouse also owns \$8,000. You cannot direct your staff to participate in an event at ABC Widget offices because you own more than \$15,000 in the company and cannot participate in any particular matter that involves or affects ABC Widget as a specific party.

EXAMPLE: Your father-in-law passed away recently and bequeathed to your spouse shares in an oil and gas company worth \$30,000. You can’t work on a specific party matter

involving that company and also now can't work on any rulemaking that affects all oil and gas companies.

-

What to do if you're worried about a conflict

If you are concerned that you have a conflict, **contact OGC/Ethics immediately**. We will go over the available options for you. Typically, potential conflict of interests are resolved in one of the following ways:

- 1) **Don't participate.** This means that you do not participate in the matter at all, including attending meetings, receiving briefings or being copied on substantive documents. We recommend that you document your recusal in writing, with a copy to OGC/Ethics.
- 2) **Divest entirely or get below the regulatory threshold.** You can either sell outright on your own or, if the sale will result in a tax liability for capital gains, then you may instead contact OGC/Ethics for a "Certificate of Divestiture" before you sell. This will enable you to defer capital gains tax, but you have to ask OGC/Ethics for assistance before you divest.
- 3) **Ask for a waiver.** Only the Agency's Designated Agency Ethics Official (DAEO) in OGC is authorized to waive the prohibition of 18 U.S.C. §208(a) where the interest is "not so substantial as to be deemed likely to affect the integrity of services which the Government may expect." OGC must consult with another federal agency before issuing a waiver, which are rarely granted.

Margaret Ross | Ethics Officer | Office of General Counsel | US EPA | William Jefferson Clinton
Federal Building Room 4310A North | Washington, DC 20460 (for ground deliveries: 20004) | phone
202-564-3221

From: [Ross, Margaret](#)
To: [Kelly, Albert](#)
Cc: [Falvo, Nicholas](#)
Subject: Remaining TO DO:
Date: Wednesday, January 31, 2018 10:56:00 AM

Good Morning Mr. Kelly,

I'll be calling you shortly, and I just wanted to provide this written update. I've included all of the information you provided to me in our last meeting, which clears up all of the duplicate entries, the structure of all of (b) (6). The whole report is now much more clear and easy to understand. Thank you for all the time and energy you've spent with me thus far.

Listed below are the remaining outstanding items. Most critical are those items that require more information about (b) (6)

The one item I did not include in the list below is (b) (6). You've already reported the (b) (6)

so please validate. I am consulting with the Office of Government Ethics to verify whether this is sufficient, or whether they need a (b) (6). Regardless of what they say, please make sure that the way I've entered the information is true and correct. If it is not, let me know.

Comments of Reviewing Officials (not publicly displayed on report):

PART	#	REFERENCE	COMMENT
(b) (6)			

From: [Ross, Margaret](#)
To: [Kelly, Albert](#)
Cc: [Fugh, Justina](#); [Griffo, Shannon](#)
Subject: Update on Financial Disclosure
Date: Tuesday, March 13, 2018 6:00:31 PM

Hi Mr. Kelly,

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Best,
Margaret

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- **Phillips 66 and Phillips 66 Partners.** Mr. Kelly did not have a conflict with Phillips 66 Partners or with Phillips 66 even before (b) (6) the exemption level for specific party matters. So we reaffirm that he can participate in matters where Phillips 66 is a party and he can participate in matters where Phillips 66 Partners is a party.

We determined that Phillips 66 and Phillips 66 Partners are not the same company. (Phillips 66 Partners is a Limited Partnership for whom Phillips 66 is the General Partner, and owns

approximately 75% of the stock.) Theoretically, if Partners were a wholly owned subsidiary of Phillips 66, (again, it is not), then Mr. Kelly's (b) (6)

the exemption level for specific party matters. Because it has been reported (incorrectly) that Phillips 66 Partners is a wholly owned subsidiary of Phillips 66, and cognizant of misguided concerns about the similarity in the names of the two companies, Mr. Kelly decided of his own volition, to avoid even a whiff of conflict, to (b) (6)

the exemption level for specific party matters.

- **ConocoPhillips.** Mr. Kelly does not have a conflict with ConocoPhillips. He does (b) (6) the exemption level for specific party matters. He can participate in matters where ConocoPhillips is a party.
- **Axon.** Mr. Kelly has (b) (6) the exemption level for specific party matters. However, I have confirmation from OSRE that Axon is not a PRP for any superfund site. Mr. Kelly must remain vigilant, however, and not participate in any matters where Axon is a party, should one arise in the future.
- **SpiritBank.** Mr. Kelly has (b) (6) the exemption level for specific party matters and matters of general applicability. However, SpiritBank is not a PRP for any superfund site, and Mr. Kelly does not and is unlikely to work on any matters of general applicability involving banks or banking. Mr. Kelly knows that he must remain vigilant, however, and not participate in any matters where SpiritBank is a party, or might be affected by a matter of general applicability, should that unlikely event ever occur.

In order to support the continued fulfillment of your ethics obligations, please see the following FAQ, and let us know if you have any questions:

What is a particular matter?

A "particular matter" involves any deliberation, decision or action and that is focused on the interests of specific persons/organizations or any identifiable class of persons. It includes "specific party" matters (e.g., contracts, grants, assistance agreements, lawsuits, enforcement action, permits, licenses, audits) and matters of "general applicability" (e.g., rulemaking or policy matters) that distinctively affect a particular industry or identifiable class of persons.

What is "personal and substantial" participation?

Personal participation means that you were personally involved in the matter or that you directed or controlled a subordinate's participation. Substantial participation means that your involvement in the matter was of significance, which includes decision-making, review or recommendation as to an action being taken, signing or approving a final document, and/or participating in a final decision briefing.

What is a "direct and predictable" effect on a financial interest?

The effect must be direct and predictable and not speculative (though the actual dollar amount does not need to be ascertained). There must be close causal link between any decision or action to be

taken in the matter and any expected effect of the matter on the financial interest.

Regulatory Exemption Levels

There are different regulatory exemption levels, depending on the type of particular matter. You can still participate if you own less than the levels below:

SPECIFIC PARTY MATTER	MATTER OF GENERAL APPLICABILITY
e.g., an enforcement action against ABC Widget Company e.g., a contracting decision involving ABC Widget Company	e.g., working on a rulemaking that affects all widget manufacturers
=\$15,000 aggregate in ABC Widget Co. =\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product)	=\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.) =\$50,000 aggregate in all affected parties (all widget makers)

Don't forget that you have to add together your own ownership interest and any imputed interest. You also have to aggregate how many assets you own in the same sector.

EXAMPLE: You own \$8,000 worth of ABC Widget and your spouse also owns \$8,000. You cannot direct your staff to participate in an event at ABC Widget offices because you own more than \$15,000 in the company and cannot participate in any particular matter that involves or affects ABC Widget as a specific party.

EXAMPLE: Your father-in-law passed away recently and bequeathed to your spouse shares in an oil and gas company worth \$30,000. You can't work on a specific party matter involving that company and also now can't work on any rulemaking that affects all oil and gas companies.

What to do if you're worried about a conflict

If you are concerned that you have a conflict, **contact OGC/Ethics immediately**. We will go over the available options for you. Typically, potential conflict of interests are resolved in one of the following ways:

1. **Don't participate.** This means that you do not participate in the matter at all, including attending meetings, receiving briefings or being copied on substantive documents. We recommend that you document your recusal in writing, with a copy to OGC/Ethics.
2. **Divest entirely or get below the regulatory threshold.** You can either sell outright on your own or, if the sale will result in a tax liability for capital gains, then you may instead contact OGC/Ethics for a "Certificate of Divestiture" before you sell. This will enable you to defer capital gains tax, but you have to ask OGC/Ethics for assistance before you divest.
3. **Ask for a waiver.** Only the Agency's Designated Agency Ethics Official (DAEO) in OGC is authorized to waive the prohibition of 18 U.S.C. §208(a) where the interest is "not so substantial as to be deemed likely to affect the integrity of services which the Government

may expect.” OGC must consult with another federal agency before issuing a waiver, which are rarely granted.

Margaret Ross | Ethics Officer | Office of General Counsel | US EPA | William Jefferson Clinton
Federal Building Room 4310A North | Washington, DC 20460 (for ground deliveries: 20004) | phone
202-564-3221